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IV. Department of Employee Trust Funds -- Dave Hinrichs, Executive Assistant to the Secretary and Joanne Cullen, Budget Director

The Department of Employee Trust Funds requests a supplement of \$336,300 SEG in 1996-97 from the Committee's appropriation under s. 20.865(4)(u) to the department's s. 20.515(1)(t) Automated operating systems appropriation to fund projects included in the department's information technology plan for 1996-97.

Governor's Recommendation

Approve ETF's request for \$336,300 SEG to cover CPU costs associated with automated operating systems development and implementation.



Legislative Fiscal Bureau

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June 27, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Administration--Section 13.10 Request for Approval of the Transfer of Funding and Position Authority from the Department of Public Instruction to the Department of Administration--Agenda Item V

BACKGROUND

Higher Educational Aids Board

The Higher Educational Aids Board (HEAB) is the agency responsible for administering state-funded, student financial aid programs and negotiating interstate higher education reciprocity agreements. The Board is a part-time, independent policy-making body composed of the State Superintendent and 18 members appointed by the Governor (three Board of Regents members, two State Technical College System Board members, five private college board of trustee members, three students (one each from the UW System, the Technical College System and private colleges) and five public members). The Board members serve at the pleasure of the Governor (that is, without set terms) and are not subject to Senate confirmation.

The agency is authorized two unclassified positions: an Executive Secretary and a Deputy Secretary. In 1995-96, HEAB has a total of 13.0 FTE authorized positions (9.75 GPR, 1.75 FED and 1.50 SEG) which includes the two unclassified positions.

Prior to January 1, 1996, a Council on Financial Aids advised the Executive Secretary on financial aid issues. The Council consisted of seven students (three UW System students, two technical college students and two private college students) and seven financial aids administrators (three administrators from the UW System, two administrators from the Technical College System (WTCS) and two administrators from private colleges). The 1995-97 state budget (Act 27) repealed the Council effective January 1, 1996.

Educational Approval Board

The Educational Approval Board (EAB) is currently responsible for: (a) approving and regulating private, nonprofit and for-profit schools that offer vocational, technical or degree programs (except in-state baccalaureate or higher degree programs) to Wisconsin residents; and (b) approving education and training programs for veterans and war orphans receiving assistance from the federal government. The Board consists of up to seven members appointed by the Governor without Senate confirmation. The statutes require that Board members, who serve at the pleasure of the Governor, be "representatives of state agencies and other persons with a demonstrated interest in education programs."

The agency is attached to the Technical College System (WTCS) Board for administrative purposes and has a total of 9.0 FTE authorized positions (4.0 PR and 5.0 FED) in 1995-96. The statutes authorize the EAB to employ an Executive Secretary in the classified service.

1995 Act 27

The 1995-97 state budget contained the following provisions which would have restructured the governance of the Department of Public Instruction (DPI), effective January 1, 1996:

- The name of the Department of Public Instruction would have been changed to the Department of Education (DOE).

- An eleven-member Education Commission would have been created to function as the policy-making unit for DOE.

- The administrative powers and duties of DOE would have been vested in a new Secretary of Education, appointed by the Governor (with Senate confirmation).

- All statutory powers and duties currently authorized to the State Superintendent of Public Instruction would have been assigned to either the Secretary of Education or the Department of Education.

- A separate Office of the State Superintendent of Public Instruction consisting of the State Superintendent and 5.0 FTE staff positions would have been created. The State Superintendent would have been assigned certain statutory responsibilities and would have served as the chairperson of the Education Commission.

In addition to restructuring the governance of DPI, Act 27 would have eliminated the Higher Educational Aids Board and the Educational Approval Board and transferred their respective staffs, functions and appropriations to the Department of Education, effective July 1, 1996. The Education Commission would have assumed the responsibilities of EAB and HEAB. As noted above, Act 27 also eliminated the Council on Financial Aids, effective January 1, 1996.

In total, \$677,900 and 10.0 FTE positions (\$577,800 GPR and 8.5 GPR positions and \$100,100 SEG and 1.5 SEG positions) was provided in 1996-97 for the administration of HEAB programs. The GPR funds were placed in DOE's general program operations appropriation (s. 20.255(1)(a)). A new appropriation (s. 20.255(1)(u)) was created for the SEG funds. Authorization for an unclassified Executive Secretary and Deputy Secretary would be repealed, effective July 1, 1996.

Act 27 also provided \$548,500 and 8.0 FTE positions (\$253,300 PR and 3.5 PR positions and \$295,200 FED and 4.5 FED positions) for the administration of EAB programs in 1996-97. Two new appropriations (s. 20.255(4)(g) and (m)) were created within DOE for this purpose. The statute authorizing the EAB to employ an Executive Secretary would be repealed, effective July 1, 1996.

Supreme Court Ruling

On August 8, 1995, 18 citizen-taxpayers filed a complaint in Dane County Circuit Court claiming that the Act 27 provisions relating to restructuring the governance of DPI violated Article X, Section 1 of the Wisconsin Constitution which provides, in part, that "The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct; and their qualifications, powers, duties and compensation shall be prescribed by law."

On September 19, 1995, the Supreme Court granted the Governor's petition for original jurisdiction and the Circuit Court proceedings were stayed. The Supreme Court issued an opinion on March 29, 1996, which held the Act 27 provisions void. In Thompson v. Craney, the Court concluded that the provisions unconstitutionally give the powers of the elected State Superintendent to appointed "other officers" at the state level who are not subordinate to the Superintendent.

In its opinion, the Supreme Court identifies 148 sections of Act 27 as the provisions relevant to the action. The Court refers to these sections as the "education provisions" which are declared void by its decision. The majority of the voided sections relate to: (1) creation of the Education Commission; (2) creation of the position of Secretary of Education; (3) creation of the Office of the State Superintendent of Public Instruction; (4) renaming the Department of Public Instruction; and (5) transferring the powers and duties of the State Superintendent of Public Instruction.

The provisions relating to the elimination of HEAB and EAB and the transfer of their functions to the Department of Education (a total of 135 Act 27 provisions) were neither included among the provisions challenged in the case, nor addressed by the Supreme Court in its ruling. However, since the Department of Education and the Education Commission have been voided by the Court, it is unclear where the HEAB and EAB staff should be housed and which body or bodies should be responsible for the boards' policy-making functions.

The Supreme Court's decision did not affect DPI's appropriations and the funding levels established by Act 27 for the 1995-97 biennium. All of the amounts under DPI's appropriations schedule (s. 20.255 of the statutes, which would have been DOE's schedule under Act 27) remain in effect including the appropriations providing administrative funds for HEAB and EAB programs. However, appropriations for the various financial aid grant and loan programs currently administered by HEAB are under s. 20.235 of the statutes and, effective July 1, 1996, will be titled "Department of Education; Higher Educational Aids." Since the Act 27 provision renaming this section from HEAB to DOE was not voided by the Court, it is not clear what agency will have the authority to expend funds from these appropriations.

On May 9, 1996, the Committee on Assembly Organization introduced 1995 Assembly Bill 1102 which would have addressed the issues raised by the Supreme Court's ruling including those relating to the status of HEAB and EAB. The bill would have restored both boards (albeit with some changes to their membership and structure). EAB would have continued to be attached to the WTCS Board and HEAB would have been attached to DPI for administrative purposes. In addition, the bill would have restored authorization for each of the two boards to employ an executive secretary, but provided additional funding and position authority (\$78,900 GPR and 1.0 GPR position in 1996-97) for this purpose only for HEAB. The Assembly did not take action on the bill and it failed to pass pursuant to Senate Joint Resolution 1.

REQUEST

In order to provide for the temporary administration of the programs currently administered by HEAB and EAB, the Department of Administration requests the Committee's approval of the following transfers of funding and positions from DPI to DOA in 1996-97:

HEAB Functions

- \$577,800 GPR and 8.5 GPR positions from DPI's general program operations appropriation (s. 20.255(1)(a)) to DOA's general program operations appropriation for committees and interstate bodies (s. 20.505(3)(a)).

- \$100,100 SEG and 1.50 SEG positions from DPI's appropriation for Wisconsin Health Education Assistance Loan (WHEAL) program repayment revenue (s. 20.255(1)(u)) to DOA's PR-Service appropriation for materials and services to state agencies (s. 20.505(1)(ka)). [NOTE: Although DOA's request refers to a "transfer" of SEG funds from DPI's WHEAL appropriation, the DOA appropriation from which these funds would be expended is a PR-S appropriation. Therefore, the request should not be for a transfer of funds, but for an increase in PR-S expenditure authority of \$100,100 and 1.50 positions.]

EAB Functions

- \$295,200 FED and 3.5 FED positions from DPI's proprietary school federal aid appropriation (s. 20.255(4)(m)) to DOA's appropriation for federal grants and contracts (s. 20.505(1)(ma)).
- \$253,300 PR and 4.5 PR positions from DPI's proprietary school operations appropriation (s. 20.255(4)(g)) to DOA's appropriation for services to nonstate governmental units (s. 20.505(1)(im)).

Project Position

In addition, DOA requests the transfer of \$78,900 GPR in 1996-97 from the Committee's GPR supplementation appropriation (s. 20.865(4)(a)) to DOA's general program operations appropriation for committees and interstate bodies (s. 20.505(3)(a)) and the authorization of 1.0 GPR project position. The project position would provide staff support to two councils created by an executive order of the Governor to advise DOA in the administration of HEAB and EAB programs.

With the exception of the \$78,900 GPR for the project position, the funding amounts which would be transferred to DOA under the agency's request are equal to the amounts which would have been provided to DOE for HEAB and EAB functions under Act 27. Therefore, the requested transfer would have no effect on current DPI programs or staff.

ANALYSIS

While the Supreme Court's ruling in Thompson v. Craney voided the Act 27 provisions which would have created a Department of Education and an Education Commission, it did not address those provisions relating to the elimination of EAB and HEAB and the transfer of these boards' functions to DOE. Beginning July 1, 1996, both boards will be eliminated and no existing state agency (including DOA) will have statutory authority to administer HEAB and EAB programs. Statutory language included in Act 27, but not affected by the Supreme Court's ruling, specifically grants this authority to DOE, an agency which will not exist. Therefore, the current HEAB and EAB programs will have no legal authority to function beginning on July 1, 1996.

DOA proposes to temporarily administer HEAB and EAB programs during the 1996-97 fiscal year. The proposal indicates that this would be accomplished through:

- The requested transfer of funds and positions related to HEAB and EAB functions from DPI's appropriation schedule to existing appropriations within DOA; and

- An executive order issued by the Governor which directs the Secretary of DOA to assume responsibility for the HEAB and EAB programs, beginning July 1, 1996, and creates two advisory councils attached to DOA.

On June 9, 1996, the Governor signed Executive Order #283 which establishes two councils: the Higher Educational Aids Council and the Educational Approval Council. Each council will consist of a chair and such other members as the Governor determines necessary and will, to the extent possible, include members of the current boards (HEAB and EAB).

DOA argues that although neither the Supreme Court nor Legislature intended to terminate HEAB and EAB programs, unless some action is taken, these programs will cease to operate on July 1, 1996. Furthermore, DOA argues that while it does not have specific statutory authority to administer HEAB and EAB programs, it is the most appropriate agency to temporarily assume these functions given its charge under s. 16.001 of the statutes to "resolve administrative and financial problems faced by the agencies, Governor and Legislature of the state" and its role as the state's general administrative agency. The request indicates that the Governor intends to "recommend legislation in January 1997 to permanently address the future of these programs, beginning in the 1997-99 biennium."

Since new appropriations cannot be created without legislation, DOA proposes that the HEAB and EAB administrative funds be transferred to various existing appropriations within DOA. However, one of the DOA appropriations may not be well suited to the purposes for which the funds would be used. Specifically, the appropriation for committees and interstate bodies to which the GPR funds for HEAB administration (\$577,800 and 8.50 positions) would be transferred is "for the expenses of committees created by law or executive order." The Governor's executive order creates an advisory "council" for higher educational aids, rather than a "committee." Further, it could be argued that funding for HEAB staff would not qualify as an "expense" of such a council.

It is important to reiterate that even if DOA's proposal is approved by the Committee, the agency's administration of HEAB and EAB programs could be subject to a legal challenge on the basis that DOA is not authorized to expend the financial aid funds from the appropriations under s. 20.235 of the statutes or to make policy decisions regarding HEAB and EAB programs. Attorneys for the Legislative Council and the Legislative Reference Bureau indicate that the enactment of legislation would be the only means by which a specific state agency or agencies could be assigned clear legal authority to administer HEAB and EAB programs. Since the Legislature will not convene again in regular session until January, 1997, an extraordinary or special session of the Legislature could be convened in order to resolve the issue of HEAB and EAB programs. Under joint rule 81(2)(a), an extraordinary session "may be authorized at the direction of a majority of the members of the committee on organization in each house or by the passage of a joint resolution on the approval by a majority of the members elected to each house, or by the joint petition of a majority of members elected to each house." Because legislation could not be enacted prior to July 1, 1996, a temporary resolution would still be necessary.

In the absence of new legislation, one could argue that, in addition to DOA's proposal, there are other alternatives that the Committee could consider. Two of these alternatives are described below. However, like DOA's proposal, both alternatives could also be subject to legal challenge.

Assign Functions to DPI

Act 27 would have changed the name of DPI to the Department of Education and restructured the agency's governance. It could be argued that while the Supreme Court's ruling deleted this change, the Legislature's intent to broaden the state education agency's (DPI's) authority beyond K-12 education was not affected. Therefore, one could argue that any Act 27 references to DOE which were not affected by the Court's decision should be interpreted as DPI and, therefore, DPI should be responsible for the administration of HEAB and EAB programs. Because funding for the administration of these programs is currently under DPI's Chapter 20 appropriation schedule, a transfer of funds would be unnecessary.

On the other hand, DPI officials are supportive of DOA's proposal. They contend that DPI is not the same entity as DOE and, therefore, cannot legally assume the responsibilities of that agency. Further, it is argued that HEAB and EAB functions (student financial aids, proprietary school regulation and approval of veterans education programs) are associated with postsecondary education which is beyond the scope of DPI's responsibility for K-12 education. If the Committee chooses this alternative, it is possible that DPI would delay administering the HEAB and EAB programs until an opinion is issued by the State Attorney General confirming DPI's legal authority to operate the programs.

Maintain Functions with HEAB and EAB Staff

It could be argued that by voiding the creation of DOE, the Court's ruling implies that the transfer of the HEAB and EAB functions to DOE is also rescinded. Thus, in 1996-97, the respective staffs of HEAB and EAB should continue to function as separate state agencies.

The difficulty with this option is that effective July 1, 1996, the two policy-making boards will no longer exist statutorily; and their administrative funds will be under DPI's appropriation schedule. Further, because authorization for HEAB and EAB to employ executive secretaries was also eliminated in Act 27, the boards' staffs would not include designated persons in charge of the administrative functions.

If the Committee prefers this option, it may be possible to resolve some of these issues by recommending that, prior to July 1, 1996, DPI enter into memoranda of understanding with HEAB and EAB in which DPI would agree to provide funding and positions to operate HEAB and EAB programs. The administrative funds would remain in DPI's appropriation schedule, but DPI would not have to be directly involved in program administration. However, as in the

previous alternative, DPI could postpone acceptance of the recommendation until its legal authority regarding the administration of the HEAB and EAB programs is clarified.

Project Position

According to DOA's request, the project position would provide staff support to the two advisory councils and "facilitate communication between these councils and DOA." The level of funding requested by DOA (\$78,900 GPR) is identical to the amount required to fund the salary and fringe benefit costs related to the current Executive Secretary of HEAB.

It may be assumed that if the HEAB and EAB programs had been housed in DOE, one or more separate divisions or bureaus would have been created consisting of the incumbent positions which would have been transferred to DOE. Since Act 27 eliminated the executive secretary positions and provided no additional positions to DOE, it is likely that the agency would have had to designate at least one of its staff (possibly one of the transferred positions) to act in a leadership or supervisory capacity. One could argue that DOA should have the same responsibility to ensure adequate leadership for the administration of HEAB and EAB programs within its existing budget and therefore, an additional position is not necessary. DOA contends that this type of "liaison" position would not have been needed had the functions transferred to DOE because the Education Commission would have been directly responsible for the policy decisions related to HEAB and EAB programs. It is argued that under DOA's proposal, policy recommendations made by the advisory councils would need to be presented by the liaison to the Secretary of DOA.

If one accepts DOA's rationale for providing the additional position, one could argue that such a position would also be necessary if the HEAB and EAB functions are temporarily assigned to DPI. AB 1102, which would have restored both boards and the authorization for each to employ an executive secretary, would have also provided funding and position authority for the HEAB Executive Secretary (but not for the Executive Secretary of EAB). Should the Committee choose to recommend that HEAB and EAB staff continue to function as separate state agencies, the Committee may wish to restore GPR funding and position authority for the Executive Secretary of HEAB. If it is determined that an additional position to function as an Executive Secretary for EAB is also necessary and funds are available to support the cost, an additional PR position could be requested under s. 16.505 of the statutes and/or an additional FED position could be approved by DOA.

ALTERNATIVES

A. Appropriation and Position Transfers

1. Approve DOA's request to transfer a total of \$1,126,200 and 16.5 FTE positions in 1996-97 (\$577,800 GPR and 8.5 GPR positions; and \$295,200 FED and 3.5 FED positions; and \$253,200 PR and 4.5 PR positions) from DPI to DOA for the temporary assumption of the administrative responsibilities for HEAB and EAB programs. In addition, increase DOA's expenditure authority from its PR-Service appropriation for materials and services to state agencies by \$100,100 PR-S and 1.5 PR-S positions for the administration of the WHEAL program.

2. Deny the request. Instead, recommend that DPI administer the HEAB and EAB programs.

3. Deny the request. Instead, recommend that, prior to July 1, 1996, DPI enter into a memorandum of understanding with HEAB for DPI to provide \$577,800 GPR and 8.5 GPR positions and \$100,100 SEG and 1.5 SEG positions to HEAB in 1996-97, for the administration of student financial aid programs. Recommend that, prior to July 1, 1996, DPI enter into a memorandum of understanding with EAB to provide \$295,200 FED and 3.5 FED positions and \$253,300 PR and 4.5 PR positions to EAB in 1996-97, to carry out the functions of the Board.

4. In addition to Alternatives 1., 2., or 3., recommend to the Joint Committee on Legislative Organization that an extraordinary session of the Legislature be convened for the purpose of introducing and acting on legislation which would assign authority to administer HEAB and EAB programs to a specific state agency or agencies.

B. Project Position

1. Approve DOA's request to provide a supplement of \$78,900 GPR from the Committee's appropriation to fund 1.0 FTE project position to serve as one of the following:

a. A liaison between DOA and the two advisory councils created by Executive Order #283.

b. A liaison between the State Superintendent and HEAB and EAB staff.

c. The Executive Secretary of HEAB.

2. Deny the request.

Prepared by: Merry Bukolt and Dan Clancy

MO# Alt. A-1

BURKE	Y	(N)	A
ANDREA	Y	(N)	A
GEORGE	Y	N	A
DECKER	Y	(N)	A
JAUCH	Y	(N)	A
WINEKE	Y	(N)	A
WEEDEN	Y	N	A
COWLES	(Y)	N	A
BRANCEL	(Y)	N	A
FOTI	(Y)	N	A
2 SCHNEIDERS	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
PORTER	(Y)	N	A
LINTON	Y	(N)	A
COGGS	Y	(N)	A

AYE 7 NO 7 ABS 2

MO# B 1(C)

BURKE	(Y)	N	A
ANDREA	(Y)	N	A
GEORGE	Y	N	(A)
DECKER	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
WEEDEN	Y	N	(A)
COWLES	(Y)	N	A
2 BRANCEL	(Y)	N	A
FOTI	(Y)	N	A
SCHNEIDERS	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
PORTER	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	N	A

AYE 14 NO 0 ABS 2

ADMINISTRATION

Transfer of Higher Educational Aids Board
and Educational Approval Board Functions

Motion: 400

Move to deny the request. Instead, recommend that prior to July 1, 1996, DPI enter into a memorandum of understanding with HEAB for DPI to provide \$577,800 GPR and 8.5 GPR positions and \$100,100 SEG and 1.5 SEG positions to HEAB in 1996-97, for the administration of student financial aid programs. Recommend that prior to July 1, 1996, DPI enter into a memorandum of understanding with EAB to provide \$295,200 FED and 4.5 FED positions and \$253,300 PR and 3.5 PR positions to EAB in 1996-97, to carry out the functions of the Board. Specify that after June 30, 1996, EAB staff and functions would remain attached to the Wisconsin Technical College System Board for administrative purposes.

MO# 400

2 BURKE	(Y)	N	A
ANDREA	(Y)	N	A
GEORGE	Y	N	(A)
DECKER	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
WEEDEN	Y	N	(A)
COWLES	(Y)	N	A
BRANCEL	(Y)	N	A
FOTI	Y	(N)	A
SCHNEIDERS	Y	(N)	A
OURADA	Y	(N)	A
HARSDORF	(Y)	N	A
PORTER	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	N	A

AYE 11 NO 3 ABS 2

Memorandum

STATE OF WISCONSIN
DEPARTMENT OF PUBLIC INSTRUCTION



Date: June 17, 1996

To: Members, Joint Committee on Finance

From: John T. Benson *John*
State Superintendent

Subject: S. 13.10 Request from the Department of Administration--Higher Educational Aids Board and the Educational Approval Board

As you know, 1995 Wisconsin Act 27 repealed the Higher Educational Aids Board (HEAB) and the Educational Approval Board (EAB), effective July 1, 1996, and transferred their staff and responsibilities into a proposed Department of Education (DOE). Earlier this year, the Wisconsin Supreme Court ruled the creation of a DOE to be unconstitutional. However, the Court's ruling did not void the repeal of HEAB and EAB or the transfer of their functions to DOE.

Although the Supreme Court's ruling leaves HEAB's and EAB's positions and operations funding in DPI's appropriation structure, we do not believe we have the legal authority to administer those agencies' programs.

This is to inform you that I support the Department of Administration's request to transfer the positions and funding specifically related to HEAB and EAB functions from the DPI to DOA so that the DOA may administer the agencies' programs until their status and location are determined legislatively.



TOMMY G. THOMPSON
GOVERNOR
JAMES R. KLAUSER
SECRETARY

Date: May 30, 1996

To: Senator Tim Weeden, Co-Chair
Representative Ben Brancel, Co-Chair
Joint Committee on Finance
119 Martin Luther King, Jr. Blvd.
P.O. Box 7882
Madison, WI 53707-7882

From: James R. Klauser, Secretary
Department of Administration

Request

Under the provisions of s. 13.10, the department requests approval of:

- 8.50 FTE GPR and \$577,000 GPR in FY97, to be transferred from the Department of Public Instruction appropriation under s. 20.255(1)(a) to the appropriation under s. 20.505(3)(a) to temporarily administer Higher Educational Aids Board (HEAB) programs;
- 1.50 FTE SEG and \$100,100 SEG in FY97, to be transferred from the Department of Public Instruction appropriation under s. 20.255(1)(u) to the appropriation under s. 20.505(1)(ka) to temporarily administer the Wisconsin Health Education Assistance Loan (WHEAL) Program currently administered by HEAB;
- 3.50 FTE FED and \$295,200 FED in FY97, to be transferred from the Department of Public Instruction appropriation under s. 20.255(4)(m) to the appropriation under s. 20.505(1)(ma) and 4.50 FTE PR and \$253,300 PR from the Department of Public Instruction appropriation under s. 20.255(4)(g) to the appropriation under s. 20.505 (1)(im) to temporarily administer Educational Approval Board (EAB) programs; and
- 1.0 FTE GPR project position and a supplement of \$78,900 GPR in FY97 from the Committee's appropriation under s. 20.865(4)(a) to the appropriation under s. 20.505(3)(a) to provide staff support to two advisory councils which will be created by the Governor under an executive order to assist DOA in the temporary administration of HEAB and EAB programs.

Background

1995 Act 27 repealed the Higher Educational Aids Board (HEAB) and the Educational Approval Board (EAB), effective July 1, 1996, and transferred their responsibilities to a newly-created Department of Education (DOE). On March 29, 1996, the Wisconsin State Supreme Court (Thompson v. Craney) ruled that the creation of the DOE was unconstitutional. However, the Court's ruling did not void the repeal of HEAB and EAB or the transfer of their functions to DOE.

Since the Supreme Court's decision did not void the repeal of HEAB and EAB or transfer their responsibilities to an existing state agency, the decision creates ambiguity regarding where the authority to

administer these programs rests. Staff and operational funds are incorporated within the DPI Chapter 20 schedule. However, DPI has not been given the explicit statutory authority to administer these staff or funds. Furthermore, the 12 financial aid grant and loan programs currently administered by the HEAB are budgeted under s. 20.235, which is not part of DPI.

It is clear that neither the Supreme Court nor Legislature intended to prevent HEAB and EAB programs from operating in the 1996-97 fiscal year. However, without prompt action by the Governor and Joint Committee on Finance, these programs could be forced to cease operation on July 1, 1996. As a result, approximately 50,000 students attending public and private postsecondary institutions in Wisconsin may not receive higher education grants for the 1996-97 school year. In addition, state regulation of approximately 100 proprietary schools (currently the responsibility of EAB) could cease, along with EAB's approval of postsecondary institutions for the training of veterans receiving financial assistance from the federal government.

A temporary administrative mechanism is needed to enable important HEAB and EAB functions to continue in 1996-97. The Governor will take the first step by issuing an executive order directing the Department of Administration to temporarily assume administrative responsibility for HEAB and EAB programs, beginning July 1, 1996. To make it possible for DOA to assume these administrative responsibilities, the Committee needs to transfer the staff and funds allocated to operate HEAB and EAB programs from DPI, where they are budgeted as of July 1, 1996, to DOA. The Governor plans to recommend legislation in January 1997 to permanently address the future of these programs, beginning in the 1997-99 biennium.

In addition, the executive order will create two advisory councils to assist DOA with the administration of HEAB and EAB programs. To facilitate effective communication between these councils and DOA, the Governor will direct DOA to request that the Committee create a 12 month project position to serve as liaison between DOA and the councils and provide supplemental funding for the position from its appropriation under s. 20.865(4)(a). This request is made necessary by the elimination of HEAB and EAB agency leadership functions and the deletion of 2.0 FTE positions in Act 27, effective July 1, 1996.

Summary

It is critical that the responsibilities for student financial aid, the regulation of proprietary schools and the approval of postsecondary institutions for veterans training be continued after the July 1, 1996 repeal of HEAB and EAB. Without the Committee's approval of the transfer of positions and funding from DPI to DOA, it may not be possible to provide \$51 million in state financial aid on a timely basis to the approximately 50,000 students attending Wisconsin postsecondary education institutions in the 1996-97 school year, to effectively regulate proprietary schools, and to certify postsecondary institutions for the receipt of federal veterans' assistance.

It is the Governor's intent to ensure through this request that necessary student financial aid functions and the regulation of proprietary schools be temporarily and effectively administered until all legal questions arising from the Supreme Court's decision can be resolved legislatively.

X

Tommy G. Thompson
Governor

Valorie T. Olson
Executive Secretary



HEAB Mailing Address:
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Madison, WI 53707-7885

FAX No. 267-2808

State of Wisconsin Higher Educational Aids Board

131 West Wilson Street, Madison, Wisconsin

INTERSTATE EDUCATION AGREEMENT

SOUTHWEST WISCONSIN TECHNICAL COLLEGE DISTRICT AND NORTHEAST IOWA COMMUNITY COLLEGE

The Higher Educational Aids Board will be represented by the Executive Secretary, Valorie T. Olson, at the June 18, 1996 meeting of the Joint Committee on Finance.

BRIEF SUMMARY OF REQUEST

This is a new agreement, and other than individual program designations, all provisions within the proposed agreement are identical to other interstate agreements currently in force between Wisconsin Technical Colleges and other colleges and Illinois institutions.

BACKGROUND OF THE REQUEST

This interstate agreement stems from a desire to expand training opportunities for Wisconsin residents and to make available training opportunities for Wisconsin employers. Based upon the precedent provided by existing interstate agreements, it would be good public policy for the agreement to be approved.

HOW THE REQUEST MEETS THE STATUTORY CRITERIA

The purpose of s. 39.42 is met through the continuation and necessary enhancement of these Agreements which ensure that optimum use of educational facilities and programs in Wisconsin and Iowa are met.

A JOINT EDUCATION AGREEMENT
BETWEEN NORTHEAST IOWA COMMUNITY COLLEGE
AND SOUTHWEST WISCONSIN TECHNICAL COLLEGE

THIS AGREEMENT entered into this 25th day of January, 1996, by and between the BOARD OF TRUSTEES OF NORTHEAST IOWA COMMUNITY COLLEGE, hereinafter referred to as NICC, and SOUTHWEST WISCONSIN TECHNICAL COLLEGE DISTRICT BOARD, hereinafter referred to as SWTC. The purpose of this Agreement is to provide additional educational program opportunities to the students that live in each district. Programs included under this Agreement are as follows:

SWTC Programs Available to NICC Residents
Living in the Calmar (C) and Peosta (P) Recruiting Areas

Finance	C/P
Food Service Production	C/P
Food Service Management	C/P
Medical Assistant	C/P
Agri Power & Equipment Technician	P
Auto Body and Paint Technician	P
Machine Tool Operation	C
Agri-Business/Science Technology	P
Dairy Herd Management	P
Engine Machining Technician	C/P

NICC Programs Available to SWTC Residents

Associate in Arts	C/P
Building Materials Management	C
Business Specialist	C/P
Carpentry	C/P
Commercial Residential Electrician	C
Construction Management	C
Diesel Mechanics	P
Heating & Air Conditioning	P
Industrial Electrician	C
Nondestructive Testing Technician	P
Plumbing, Heating, & AC	C

WHEREAS, it is the desire of the parties hereto to expand educational services to the greatest number of students in each district served by the parties; and

WHEREAS, NICC is empowered by virtue of Section 28E.9, 28E.10, 28E.8, and 260C.14, Code of Iowa, to enter into a reciprocal tuition agreement.

§28E.9 Status of interstate agreement.

...Such agreements shall, before entry into force, be approved by the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state.

§28E.10 Approval of statutory officer.

If an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved as to all matters within the state officer's or agency's jurisdiction.

§28E.8 Filing and recording.

Before entry into force, an agreement made pursuant to this chapter shall be filed with the secretary of state and recorded with the county recorder.

WHEREAS, SWTC is empowered by virtue of Section 512-39.42 of the State of Wisconsin Revised Statutes which has been amended to:

"39.42 INTERSTATE AGREEMENTS. The board, with the approval of the joint committee on finance acting under s.13.101, or the governing boards of any publicly supported institution of post high school education, with the approval of the board and the joint committee on finance acting under s.13.101, may enter into agreements or understandings which include remission of nonresident tuition for designated categories of students at state institutions of higher education with appropriate state agencies and institutions of higher education in other states to facilitate use of public higher education institutions of this state and other states. Such agreements and understandings shall have as their purpose the mutual improvement of educational advantages for residents of this state and such other states or institutions of other states with which agreements are made"; and

WHEREAS, the parties hereto believe this Agreement should be one means of implementing a viable method of cooperation between the parties hereto; and

WHEREAS, by means of this Agreement, the parties hereto desire to share programs of each institution and thereby maximize the utilization of the finances, facilities, equipment, and personnel of each institution, and by so doing, provide educational services that might otherwise be impracticable for either of the parties individually; and

WHEREAS, the parties hereto believe that implementation of this Agreement holds great promise for further development of higher education in Iowa and Wisconsin.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. INSTITUTIONAL IDENTIFICATION

For the purpose of the Agreement, the district sending the students to another district will be referred to as the "sending district," and the institution receiving students from another district will be referred to as the "degree granting institution."

2. TERMS OF AGREEMENT

Any educational program offered by Northeast Iowa Community College shall be a program approved by the Iowa State Board of Education and any program offered by Southwest Wisconsin Technical College shall be a program approved by the Wisconsin Technical College System Board.

The presidents of the participating colleges or their designees will be responsible for the administration of this agreement. The parties to this agreement do not contemplate the joint acquisition of any real or personal property to be used in this joint undertaking.

3. DURATION AND TERMINATION OF AGREEMENT

The administration of each of the parties hereto shall confer and agree upon an educational program to be subject to the terms of this Agreement prior to the beginning of such an instructional offering, and such initial Agreement shall be in force until either party issues a letter of intent to cancel the Agreement. This Agreement may be terminated at the request of either party provided such notice is given in writing eleven (11) months prior to the affected semester. In the event of termination, students who have entered a program will be allowed a maximum of five years from the date of termination to complete the program under the terms of this Agreement.

4. AMENDMENT TO AGREEMENT

Amendments and/or revisions to this Agreement may be made in writing at any time by mutual consent of all parties. The procedure for approval of such amendments and/or revisions shall follow the same procedure employed in securing approval by all parties in the original cooperative agreement.

5. CLASS SCHEDULES

Institutional class schedules shall be exchanged and kept available for student planning.

6. APPLICATION

Applications of first time students that start classes at SWTC will be subject to the State Statute TCS 10.07, which states:

(2) District residents who apply on or before the following dates shall have admission priority:

1. For programs commencing anytime during the fall semester, the preceding January 1.

2. For programs commencing anytime during the spring semester, the preceding May 1.

3. For programs commencing anytime during the summer semester, the preceding October 1.

(b.) After the dates provided, district residents shall have priority equal to nondistrict state residents for program admission.

(5)(c) Waiting list applicants shall have priority over all other applicants for admission in subsequent terms and shall be admitted in the order of their original application for admissions.

(8) Students who apply for district admission under a reciprocity agreement will be considered nondistrict residents and will be subject to the admissions dates established above.

Students making application to NICC will be accepted on a first-come, first-served basis, regardless of residency.

7. REGISTRATION

Students registering at the "degree granting institution" shall be treated as members of that district for the terms of their enrollments. The "degree granting institution" shall retain the rights to deny registration if the requested courses are not considered to be appropriate to this Agreement.

8. ADDITIONAL EDUCATIONAL SERVICES

The "degree granting institution" shall provide support services for students from the "sending district," similar to those provided for any other student at its campus.

Courses, seminars, workshops, and in-service programs related to any educational program bound by this Agreement may be offered within the district

confines of either institution by making the other aware of the offering. Said programs may be carried on singly by the "sending" or "degree granting institution" or jointly by both institutions.

9. AWARDING OF DEGREES

Students who complete their program requirements may participate in commencement exercises at the "degree granting institution."

10. MINIMUM OF INSTRUCTIONAL DAYS

The parties understand and agree that the minimum amount of instructional time required by the "degree granting institution" will meet the credit requirements for course completion.

11. SCHOLARSHIPS AND STUDENT ACTIVITIES

The "degree granting institution" shall be considered the home district for the student. Students from the "sending district" may be eligible at the "degree granting institution" for any of the extracurricular activities, scholarships, or other recognition of excellence in the program for which they are enrolled at the "degree granting institution."

The person responsible for financial aid at each institution shall work closely with each other to insure accuracy of records and the greatest support possible to students.

12. RECORDS

The "degree granting institution" shall maintain appropriate full-time equivalency (FTE), head count, program, and course enrollment records for students from the "sending district" in accordance with standard procedures while that student is in

attendance, and will provide copies of said records to the "sending district" and interested state agencies upon request, so long as established procedures are followed.

13. PUBLICITY

This Agreement shall be duly publicized in the participating district's catalogs and other informative brochures consistent with institutional policy or other similar publicity.

14. IDENTIFICATION OF CONDITIONS OF AGREEMENT TO STUDENTS

A student shall be subject to all normal operating rules and conditions of the campus he/she is on at any given time.

15. CONTRACTUAL RATES CHARGED STUDENTS

This contractual rate shall be based upon the institution's in-district, in-state charge.

16. REIMBURSEMENT

The "degree granting institution" shall ascertain whether it is eligible to file any claims for federal reimbursement for any student enrolled in its classes.

17. STATE AND OTHER FUNDING

Private or foundation grants which further the educational goals of and generally benefit all students attending the "degree granting institution," whether or not they are "sending district" students, may be applied for either separately or jointly. In no event shall the ability of either or both parties to obtain federal or state educational funds be jeopardized.

18. FINANCIAL AID

The "degree granting institution" shall provide all financial aid that the student is eligible.

19. VETERAN REPORTING REQUIREMENTS

The "degree granting" district shall meet the reporting requirements of the Veterans Administration.

20. TRANSPORTATION

Students shall be responsible and liable for their own transportation to and from both "sending" and "degree granting" districts.

21. EFFECTIVE DATE

This agreement shall be effective upon approval of the appropriate boards and agencies and upon filing with the secretary of the State of Iowa and being recorded with the appropriate county recorder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in

duplicate as of the date and year first above written.

BOARD OF TRUSTEES OF
NORTHEAST IOWA COMMUNITY
COLLEGE

SOUTHWEST WISCONSIN TECHNICAL
COLLEGE DISTRICT BOARD

Arthur E. Johnston

A Bruce Bradley

Chairman of the Board

Chairman of the Board

W. Olsen

Richard A. Rogers

President

President

Janet Bullerman

Robert L. Lands

Attest: Secretary of the Board

Attest: Secretary of the Board

Date: _____

Date: 1/25/96

Effective Date: _____

Dwight A. York

Dwight A. York, State Director
Wisconsin Technical College System Board

Val Olsen, Executive Secretary
State of Wisconsin Higher Ed Aids Board

Iowa Department of Education

CORRESPONDENCE MEMORANDUMSTATE OF WISCONSIN
Department of Administration

Date: June 11, 1996

To: Members, Joint Committee on Finance

From: James R. Klauser, Secretary
Department of Administration *James R. Klauser*

Subject: Section 13.10 Request from the Department of Administration (DOA) related to the transfer of positions and funding from the Department of Public Instruction (DPI) to DOA and the creation of a 1.0 FTE GPR project position.

Request

DOA requests the approval by the Joint Committee on Finance (JCF) to transfer positions and funding from the Department of Public Instruction (DPI) appropriations s. 20.255(1)(a), s. 20.255(1)(u), s. 20.255(4)(m) and s. 20.255(4)(g) to DOA appropriations s. 20.505(3)(a), s. 20.505(1)(ka), s. 20.205(1)(ma) and s. 20.505(1)(im) to temporarily administer student financial aid programs, regulate proprietary schools and certify postsecondary institutions for the receipt of federal veterans' assistance.

Background

1995 Wisconsin Act 27 repealed the Higher Educational Aids Board (HEAB) and the Educational Approval Board (EAB), effective July 1, 1996, and transferred their responsibilities to a newly-created Department of Education (DOE). On March 29, 1996, the Wisconsin State Supreme Court (Thompson v. Craney) ruled the creation of DOE unconstitutional. However, the Court's ruling did not void the repeal of HEAB and EAB or the transfer of their functions to DOE.

As a result, it is not clear what agency, if any, is authorized to administer these programs. Beginning July 1, 1996, staff and operational funds related to the administration of HEAB and EAB programs will be part of the DPI Chapter 20 schedule. However, DPI has not been given the explicit statutory authority to administer these programs and staff. Furthermore, Act 27 did not transfer HEAB's 12 financial aid grant and loan programs into DPI's appropriation structure. They remained part of HEAB's Chapter 20 schedule (s. 20.235, Wis. Stats.), which would have been renamed the Department of Education under Act 27, beginning July 1, 1996.

In June, the Governor issued an executive order directing DOA to temporarily assume responsibility for HEAB and EAB programs and creating two advisory councils to assist DOA with their administration. The order also directs DOA to request creation of a 1.0 FTE GPR project position to serve as liaison between DOA and the two advisory councils. Supplemental funding of \$78,900 GPR for this position from JCF's appropriation under s. 20.865(4)(a) is requested. DOA states this request is made necessary by the elimination of HEAB agency leadership functions, the new executive status of the recreated councils and to ensure that HEAB and EAB services continue to be provided to the public.

Specifically, DOA seeks the following position and funding transfers from the DPI to DOA:

- 8.50 FTE GPR and \$577,000 GPR in FY97, to be transferred from the DPI appropriation under s. 20.255(1)(a) to the appropriation under s. 20.505(3)(a) to temporarily administer Higher Educational Aids Board (HEAB) programs;
- 1.50 FTE SEG and \$100,100 SEG in FY97, to be transferred from the DPI appropriation under s. 20.255(1)(u) to the PRS appropriation under s. 20.505(1)(ka) to temporarily administer the Wisconsin Health Education Assistance Loan (WHEAL) Program currently administered by HEAB;
- 3.50 FTE FED and \$295,200 FED in FY97, to be transferred from the DPI appropriation under s. 20.255(4)(m) to the appropriation under s. 20.505(1)(ma); and
- 4.50 FTE PR and \$253,300 PR from the Department of Public Instruction appropriation under s. 20.255(4)(g) to the appropriation under s. 20.505 (1)(im) to temporarily administer Educational Approval Board (EAB) programs.

Analysis

According to DOA, it is clear that neither the Supreme Court nor Legislature intended to prevent HEAB and EAB programs from operating in the 1996-97 fiscal year. However, it is conceivable that, as currently structured, and in light of the Supreme Court's decision in *Thompson v. Craney* (1996), these programs could be forced to suspend operation on July 1, 1996, since HEAB and EAB are repealed as of that date.

A temporary administrative mechanism is needed to permit HEAB and EAB to continue to operate their programs without interruption to the students and educational agencies who depend on the services they provide. With the JCF's approval of the requested position and funding transfers, DOA will temporarily assume responsibility for HEAB and EAB functions until a legislative remedy is approved. Until a permanent solution is enacted, DOA indicates that it will administer these functions during the 1996-97 fiscal year with as little change as possible to the policies and procedures developed by the respective boards.

The 12 grant and loan programs administered by HEAB result in over 55,000 awards annually to Wisconsin students attending public and private postsecondary institutions in Wisconsin. Since HEAB typically issues vouchers beginning in August to state postsecondary institutions (not individual students) for the first semester of the academic year, it is critical to provide a mechanism that enables HEAB functions to continue in the 1996-97 fiscal year. If it is determined that, under current law, no state agency has the authority to administer the distribution of higher educational aids in the 1996-97 school year, these aids would not be distributed until a statutory solution is approved. As a result, state postsecondary institutions might face a funding shortfall that could force them to bill prospective aid recipients for their expected grant or loan awards.

In addition, state regulation of approximately 100 proprietary schools (currently the responsibility of EAB) may also be suspended. Many students rely on EAB to certify the quality and stability of the educational programs offered by proprietary schools doing business in the state. Further, EAB is also charged with the responsibility to annually approve postsecondary institutions (proprietary schools, colleges and universities) for the training of veterans who receive financial assistance from the federal government. The federal government may withhold payments to veterans if these schools are not properly certified.

According to DOA, the advisory councils created by the Governor under the executive order will make recommendations to DOA related to the administration of state financial aid programs and the oversight of the state proprietary schools. While these councils would be legally prohibited from directly administering HEAB and EAB programs, they would allow postsecondary institutions and students to continue to participate in the determination of financial aid and proprietary school regulation policies. Although the composition of the proposed councils has not yet been identified, the Governor's Office indicates that it is likely to be similar to the current make-up of HEAB and EAB.

The major concern with DOA's request is the legal basis for DOA to assume responsibility for these programs. Under s. 16.001, Wis. Stats., the purposes of DOA's statutory authority include "to assure the legislature and the governor that the services are being provided to the public at the agreed upon quantity, quality and cost; and to anticipate and resolve administrative and financial problems faced by the agencies, governor and legislature of the state." Accepting that the Governor and Legislature, under Act 27, approved the quantity, quality and cost of HEAB and EAB services for the 1995-97 biennium and that the Supreme Court's decision created a problem by not designating an agency to deliver the agreed on services, it could be argued that DOA is acting within its broad statutory authority to assume responsibility of these programs.

The legal argument may be strengthened by the Committee's action under s. 13.101(4), Wis. Stats. This section authorizes JCF to transfer positions and funding between appropriations if it finds that the transfer will more effectively carry out legislative intent. Again, it could be argued that the Legislature's intent under Act 27 was to continue the operation of these programs in the 1995-97 biennium, and the Supreme Court's decision, while voiding the creation of the Department of Education, did not rule the operation of HEAB and EAB programs unconstitutional.

Creation of a liaison position between the advisory councils and DOA would provide the necessary linkage to facilitate communication between the councils and DOA's implementation of financial aid program recommendations in the 1996-97 fiscal year. In addition, the liaison could help ensure that the DOA's temporary administration is consistent with legislative intent. The liaison would also provide executive leadership to both the council and DOA to ensure that an efficient, equitable, and responsive financial

aid distribution mechanism is in place that continues to emphasize the needs of individual students.

One technical correction to the request is needed. The part of the request affecting EAB asks to transfer 3.50 FTE FED and 4.50 FTE PR positions from DPI to DOA. The request should read 4.50 FTE FED and 3.50 FTE PR positions. The requested dollar transfer is correct.

Alternatives

Two other options were considered. First, since the positions and operations funding for both HEAB and EAB are in DPI's appropriation structure, DPI could be requested to administer the programs. DPI has indicated that it does not believe it has the authority to administer these programs, even though the positions and funding are part of its budget. As DPI has noted, the positions and funding were actually budgeted to the Department of Education, not DPI. The fact that DPI's appropriation structure was used for the new agency does not give DPI the authority to administer its programs now that DOE has been ruled unconstitutional. In addition, DPI has stated that if ordered to administer these programs, it would seek an Attorney General's opinion that it has the authority to do so. Given the potential for delay, this does not seem like a suitable alternative.

Second, it could be argued that, in voiding the creation of DOE, the Supreme Court also voided (albeit indirectly) both the transfer of HEAB and EAB funding to DOE and the repeal of HEAB and EAB. As a result, HEAB and EAB still exist and no action is required to continue HEAB and EAB programs. This alternative is also problematic because the Supreme Court's decision specifically listed the sections of Act 27 that were voided. The sections related to the transfer of HEAB and EAB appropriations to DOE and the repeal of HEAB and EAB were not included in the list.

Short of a legislative solution, no alternative was identified that provides absolute certainty regarding the administration of HEAB and EAB programs in light of the Supreme Court's decision. What is clear is that without action, student financial aid programs, the regulation of proprietary schools and the certification of postsecondary institutions for veterans benefits are likely to be suspended beginning July 1, 1996. This would violate both gubernatorial and legislative intent.

A temporary administrative mechanism is necessary to enable important HEAB and EAB functions to continue in 1996-97. The Governor has issued an executive order directing DOA to temporarily assume administrative responsibility for HEAB and EAB programs, beginning July 1, 1996. While the statutes do not delegate such responsibilities to DOA as clearly as would be desired, the designation of some state entity to assume responsibility for these programs is critical if these programs are to continue. The Governor's executive order, in combination with DOA's broad statutory responsibilities and JCF action under s. 13.10 appears to be the most defensible alternative.

Members, Joint Committee on Finance
June 11, 1996
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Recommendation

Approve the request with the modification that 4.50 FTE FED and 3.50 FTE PR positions related to EAB functions be transferred from DPI to DOA.

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